IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2007

CORAM:

THE HON'BLE MR.JUSTICE M.VENUGOPAL

C.R.P. (N.P.D.) No.1716 of 2003

Ramakrishnan .. Petitioner

vs.

1. The Elementary Education
   Officer,
   O/o.Asst. Elementary Education
   Officer, Tiruthuraipoondi,
   Tiruvarur Dist.

2. The District Elementary Education
   Officer,
   O/o.Dist. Elementary Education
   Officer,
   Tiruvarur Dist.

3. State of Tamilnadu rep. By
   The Dist. Collector, Tiruvarur. .. Respondents

Prayer : Civil Revision petition filed under Section 115 CPC against the decree and order dated 18.3.2002 passed in I.A.No.16/2002 in unnumbered first appeal on the file of the Sub Court, Tiruvarur.

For petitioner : Mr.P.Kumar
For respondents : Ms.P.Shanthi Rakappan, G.A.

O R D E R

The civil revision petitioner is the plaintiff before the trial court in O.S.No.119 of 1998 on the file of the District Munsif Court, Thiruthuraipoondi.

2. The trial court passed the decree on 21.9.2001 dismissing the suit. Challenging the same, the petitioner/plaintiff had to prefer an appeal within the stipulated period. It appears that there was a delay

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in filing the appeal and hence the civil revision petitioner filed I.A.No.16 of 2002 before the Sub Court, Thiruvarur praying to condone the delay of 22 days in filing the appeal. The reason assigned by the civil revision petitioner/plaintiff before the Sub Court was that, he could not file the appeal in time for the reason that during the second week of October 2001, he was not well and therefore, he went to the Doctor and took treatment. After getting himself treated to certain extent, in the first week of November 2001, he met his lawyer and made arrangements for preferring the appeal and in that process, there is a delay of 22 days in preferring the appeal and that the said delay has not occurred on account of his indifferent attitude.

3. A counter was also filed by the first respondent herein before the learned Sub Judge, Tiruvarur, wherein it is specially stated that the civil revision petitioner has not assigned any explanation for each and every day's delay in the affidavit filed by him and only to drag on the proceedings, the appeal has been filed with a mala fide motive and hence the petition has to be dismissed.

4. The learned Sub Judge, Tiruvarur, has dismissed I.A.No.16 of 2002 on 18.3.2002 observing that no document has been filed by the petitioner for his alleged illness and also no document was filed with regard to the treatment he had for the so-called illness and that there is no oral evidence on the side of the petitioner/plaintiff and that the petitioner has to explain each and every days' delay and there is no explanation in the affidavit filed by him, and therefore, the reason assigned by the petitioner was not accepted and resultantly, the petition was dismissed.

5. Heard the learned counsel on either side.

6. It is to be pointed out that generally, a party does not stand to benefit by lodging an appeal late and refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties. The term, 'Every day's delay should be explained', should not be viewed in a pedantic way, and the approach of the Court must be in a common pragmatic manner, in the considered view of this Court.

7. More so, when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. As a matter of fact, a litigant does not stand to benefit by adopting dilatory tactics.

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Per contra, he runs a serious risk. It can be said that judiciary is respected not on account of its power to legalize injustice on technical grounds, but because it s capable of removing injustice and is expected to do so.

8. As far as the present case is concerned, the non-examination of any one on the side of the petitioner before the Sub Court is not fatal to the case. No doubt, the petitioner has not produced any medical certificate for his illness and that he has also not produced any medial certificate for the treatment he had with the Doctor. These are not fatal ones for the petitioner as he has stated that he was not well during the relevant period. Therefore, the delay of 22 days in preferring the appeal has to be condoned, taking a liberal view. Moreover, in view of the fact that the length of delay is immaterial and since the substantial justice will have to be meted out to the parties, in the circumstances, the following order is passed:-

The civil revision petition is allowed on payment of a cost of Rs.100/- (Rupees one hundred only) to be paid by the petitioner to the Tamil Nadu Mediation and Conciliation Centre, High Court Buildings, Chennai-104, within a week from today, failing which, the civil revision petition will stand dismissed automatically. In the circumstances of the case, there shall be no order as to costs.

gs.

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Subordiante Judge, Tiruvarur.

2. The Assistant Registrat, Tamilnadu Mediation and Conciliation Centre, High Court Buildings, Chennai-104.

+ One cc to Special Govt Pleader SR 68256

+ One cc to Mr. P. Kumar, Advocate sR 68171

AKR (co)

sg 26/11/07

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